

REMARKS

By this Amendment, claim 46 is amended to address the rejections set forth in the Final Office Action dated September 23, 2003. The amendments to claim 46 correct improper Markush language and eliminate other potentially unclear language. Support for the amendments to the claim comes from the specification and claims, as originally filed. Accordingly, no new matter is added by this Amendment. Currently, claims 38, 39, 46-50, 57, 58, 60, 67, 69-71, and 74 are pending and under examination in this application.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 38, 39, 46-50, 57, 58, 60, 67, 69-71, and 74 in condition for allowance. Applicants submit that the proposed amendments to claim 46 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, because all of the elements and their claimed relationships were either claimed earlier or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner. More specifically, amendment of "selected from the group comprising" to "selected from" addresses the rejection of claim 46 for reciting an improper Markush group while not altering the subject matter of the claim or expanding or altering the scope of the claim. In addition, deletion of the words "all other possible" from claim 46 addresses the rejection while not altering the subject matter of the claim or expanding or altering the scope of the claim. Furthermore, the

proposed amendments would not result in additional claims being added to the application.

Finally, the proposed amendments would place the claims in better form for appeal, should an appeal be necessary. Applicants respectfully submit that the proposed amendments were not made earlier in prosecution of the application because the need for the amendments was not evident until issuance of the Final Office Action.

I. *Rejection Under 35 U.S.C. § 112, second paragraph*

The Examiner rejects claim 46 under 35 U.S.C. § 112, second paragraph, as indefinite for reciting "selected from the group comprising" and "all other possible derivatives or stereo isomeric forms of the above compounds". (Final Office Action at page 2.) Applicants submit that the amendments made to claim 46 address both of these rejections. Thus, Applicants request entry of this Amendment and allowance of the claims.

In a first aspect of the rejection, the Examiner asserts that claim 46 improperly recites a Markush group in view of MPEP § 2173.05(h). In response, Applicants propose to change the rejected language to alternative language that recites the same subject matter and scope, but is not improper.

In a second aspect of the rejection, the Examiner asserts that claim 46 is indefinite for reciting "all other possible derivatives or stereo isomeric forms of the above compounds". The Examiner does not indicate why this phrase is unclear or indefinite. In response, Applicants propose to eliminate "all other possible" from the rejected phrase, under the assumption that the

Examiner's position is that "other possible" is unclear because the compounds listed in claim 46 are not recited as "derivatives" or "stereo isomeric forms".

Applicants respectfully submit that the metes and bounds of claim 46 are clear. In particular, one of skill in the art would understand what is meant by the terms "derivatives" and "stereo isomeric forms". For example, Webster's II New Riverside University Dictionary defines a chemical "derivative" as "a compound derived or obtained from known or hypothetical substances and containing essential elements of the parent substance". See the attached copy of the dictionary definition.

Similarly, the term "stereo isomeric form" would also be understood by one of skill in the art. For example, Hawley's Chemical Dictionary defines "stereoisomers" as compounds that have identical chemical constitution, but differ as regards the arrangement of the atoms or groups in space. See the attached copy of the dictionary definition.

Because one of skill in the art would know precisely what is being claimed when Applicants recite "derivatives" and "stereo isomeric forms" of the compounds recited in claim 46, Applicants submit that these terms are clear and definite. Accordingly, Applicants submit that all of the terms in proposed amended claim 46 satisfy the requirements of 35 U.S.C. § 112, second paragraph. Therefore, Applicants request that the Examiner enter this Amendment, and reconsider and withdraw the rejection of claim 46 as indefinite under 35 U.S.C. § 112, second paragraph.

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER <sup>LLP</sup>

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
www.finnegan.com

II. *Conclusion*

Applicants submit that the amendments to claim 46 address and overcome the rejection of this claim under 35 U.S.C. § 112, second paragraph. Therefore, Applicants request entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the claims. If the Examiner believes anything further is necessary in order to place this application in even better condition for allowance, Applicants request that their undersigned representative be contacted at the telephone number or e-mail address below to discuss the remaining issues.

Please grant any extension of time required to enter this Amendment, and charge any required fee that is not submitted with this Amendment to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By: 

Matthew T. Latimer

Reg. No. 44,204

571-203-2714

[matthew.latimer@finnegan.com](mailto:matthew.latimer@finnegan.com)

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Attachments:

Dictionary Definition

Chemical Dictionary Definition

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
[www.finnegan.com](http://www.finnegan.com)